

Application No. 09/739,989

REMARKS

In a Final Office action dated October 10, 2003, claims 1-9 and 11-17 were rejected under 35 U.S.C. 103(a). Claim 10 has been allowed. Applicant has amended claim 1 and 15 to further emphasize the difference between Zesch, Hauser and Applicant's device.

In the Final Office Action, an argument was made that there is little difference between producing a mist of ink and a mist of pharmaceutical product. Applicant respectfully submits that Applicant is unaware of any printer that is designed to produce a "mist" of ink. In fact, ink must be carefully and precisely placed onto a printed surface. In particular, Applicant contends that misting ink into the air would create a mess on the paper resulting in a huge waste of both paper and ink. Because printing requires careful control of each droplet, it is generally undesirable to give up control by simultaneously ejecting multiple droplets using a single transducer. Such a structure has been described in the last paragraph of page 3 of the specification. Thus Applicant has amended claim 1 to claim such a structure.

Claim 15 has been amended to claim that the distance from the top of the lens surface to the top of the pharmaceutical product is less than 150 micrometers as described in the second paragraph of page 4 of the specification. The reduced distances compensate for increased power losses and is less than the distance used in traditional AIP print heads.

In the Final Office Action, Claim 4 was rejected because it was held that \ limiting the burst of mist to less than 5 seconds was obvious although no reference was cited. Instead, it was held that it would be obvious to eliminate undesirable wasting of product during a time at which the user is not inhaling. Applicant respectfully submits that using Applicant's invention to render obvious a limitation represents hindsight reconstruction. None of the prior art references describe using transducers held in close proximity with an orifice and timed to meter pharmaceutical product into an inhalation stream. Merely because a concept is technologically simple does not automatically make it obvious. See. In re. Kotzab, 217 F.3d. 1365; 55 USPQ2nd 1313 (holding that references do not

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show use of one temperature sensor to control multiple valves and pointing out that the invention taught cannot be used against its teacher.). Thus Applicant's teaching of using transducers timed to coincide with inhalation cannot be used to render obvious the limitation of the time period of five seconds as no prior art has been provided that teaches the transducer-inhalator combination to begin with.

In view of the preceding amendments and remarks, Applicant believes that the pending claims are allowable over the cited prior art references. Allowance of pending claims at the Examiner's earliest convenience is hereby respectfully requested. In the event the Examiner considers personal contact advantageous to the disposition of this case, Applicant requests that Examiner contact the undersigned.

Respectfully submitted,

El Segundo, California
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Kent M. Chen
Attorney for Applicant(s)
Registration No. 39,630
(310) 333-3663